

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 808 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

STATE OF GUJARAT

Versus

MULJI HEMRAJ THAKKER

Appearance:

MR.K.P.RAVAL, ADDL. PUBLIC PROSECUTOR for the Petitioner
MR.M.M.TIRMIZI FOR MS VP THAKKER for the Respondent.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 15/10/96

ORAL JUDGEMENT

The State of Gujarat through the Deputy Conservator of Forest, Bhuj (Kutch) has filed the present petition challenging the legality and validity of the order dated 27-8-87 passed by the learned Additional Sessions Judge, Kutch at Bhuj in Criminal Appeal No.

38/1985. By the said order, the learned Judge has allowed the appeal filed by the respondent herein against the order dated 14-10-85 passed by the Deputy Conservator of Forest, Forest Division (East) Kutch at Bhuj confiscating 1100 bags of charcoal seized from the possession of the respondent.

It appears that on 10-8-85 the Forest Officers raided the courtyard (VADA) of the respondent at village Gagodar and found 1100 bags of charcoal charred from the forest thorn trees. Since the respondent was not present, the goods were sealed under a Panchnama. On 14-8-85 the statement of the respondent was recorded wherein he has, inter alia, stated that the charcoal which was seized has been obtained by him the same under the order dated 30-3-76 passed by the learned Judicial Magistrate, First Class, Rapar. According to the respondent, he had disposed of most of the quantity of the charcoal by informing the Forest Department under necessary Panchnama and the seized quantity was the balance left out of the said quantity of charcoal. The Deputy Conservator of Forest recorded a finding under his order passed under section 61-A (2) of the Indian Forest Act, 1927 that as per the Panchnama the charcoal in question was four to 5 months old and, therefore, there is reason to believe that the respondent must have got the same charred with the help of furnace after cutting the thorn trees from the forest, which is illegal as per the provisions of section 41(2) of the said Act and, therefore, the goods were required to be confiscated.

In the appeal preferred against the said order, the learned Additional Sessions Judge has recorded a finding that the Deputy Conservator of Forest had not supplied the documents to the respondent on which reliance was placed by him and, therefore, the order passed by him was in violation of the principles of natural justice. The learned Additional Sessions Judge has further observed that neither the reply of the respondent was considered nor was the respondent disclosed evidence against him and, therefore, the order passed by him is required to be set aside. In my opinion, the finding recorded by the learned Judge is just and proper and no interference is called for. The respondent has specifically stated in his statement that under the order passed by the competent Court in the year 1976, he received 3200 bags of charcoal. Out of the said quantity, he disposed of some quantity on different dates of which he informed the Forest Department. The Forest Officers had also drawn different Panchnamas regarding the stock of charcoal. Thus the respondent had explained the stock

of the charcoal to the Forest Department. In view of this, it was for the Forest Officers to confirm the stock of charcoal on hand at the time of raid with the respondent and the quantities disposed of under the various Panchnamas prepared by the Forest Department. Surprisingly, however, nothing has been stated about this in the order passed by the Deputy Conservator of Forest. It also does not become clear from the order whether the explanation of the respondent was considered. Once the respondent has come out with a plausible explanation of the stock of charcoal on hand and if the same is not considered by the Deputy Conservator of Forest, in my opinion, no order of confiscation of charcoal can be passed against the respondent. It is a matter of surprise that although the Forest Department was possessed of the correspondence with respect to the stock of charcoal and number of panchnamas drawn regarding the stock of charcoal on different occasions, there is no mention whatsoever in the order of the Deputy Conservator of Forest. The Deputy Conservator of Forest has not taken into consideration the old quantity of charcoal and has only considered the Panchnama of which even a copy was not supplied to the respondent. Thus the so-called inquiry was held one-sided against the respondent and in violation of the principles of natural justice.

Mr. K.P.Raval, learned Additional Public Prosecutor, submitted that in view of the illegalities found in the inquiry conducted by the Deputy Conservator of Forest against the respondent, the matter is required to be remanded. I see no reason to accede to the submission made by Mr. Raval. This is particularly in view of the fact that the courtyard of the respondent was raided on 10-8-85 and the charcoal in question was seized. Therefore, no useful purpose will be served in remanding the matter after a period of about 11 years especially when the respondent has come out with a plausible explanation of the stock on hand on the date of seizure. Since the Forest Department has failed to prove its case, it is not entitled to have another round of inquiry against the respondent after lapse of such a long time.

In the result, there being no substance in this petition, it fails and is dismissed. Rule is discharged with no order as to costs. Interim relief stands vacated.

True copy